

REMARKS

Claims 1, 3-7, and 12 are currently pending in the application. Claim 1 has been amended to recite “part-baking of the pastry dough is carried out by maintaining it in shape between a mold and a perforated counter-mold inside the pie base” from original claim 2. Accordingly, claims 2, 10 and 11 have been cancelled without prejudice or disclaimer. Also, claims 8 and 9 have been cancelled without prejudice or disclaimer. The amendments to the claim do not introduce any new matter.

Claims 1-4, 8 and 10-12 were rejected under 35 USC § 102(b) as being anticipated by US Patent 4,251,579 to Fuornet et al. Claims 5-7 and 9 were rejected as being unpatentable under 35 USC § 103 (a) over US Patent 4,251,579 to Fuornet et al. in view of US Patent 5,894,028 to Alden et al. The cited references fail to anticipate and fail to render obvious the present invention.

US Patent 4,251,579 to Fuornet et al. fails to anticipate the present invention since, among other things, Fuornet et al. do not teach pre-baking of a pastry dough by maintaining it in shape between a mold and a perforated counter-mold. At page 2, point 2, paragraph 2 of the office action, it is stated “The pastry dough is partially baked between a mold and a perforated counter mold for about 12 minutes at 160°C to 190°C.” This statement is not correct.

In the process suggested by Fuornet et al., a flattened pastry is first obtained by placing a lump in a mold and applying a stamp to the pastry in the mold (please see column 3, lines 16-18). The stamp is equipped with a mandrel to be fixed to a hydraulic press and the body of the press is provided with inlet openings for admitting air (please see column 3, lines 7-14). Figure 1 shows a die 7 for supporting the mold (please see column 3, lines 16-18) and the stamp 1 with inlet openings 2. The purpose for admitting air through the inlet openings is to prevent the pastry from adhering to the stamp during the flattening operation

(please see column 3, line 19). Figure 3 shows a mold with rim 13 (please see column 3, line 57).

In a subsequent step, the flattened pastry is pricked and subjected to rising in a tunnel in a steam atmosphere at about 50°C (please see column 3, lines 58-62). The pastry is then baked in an oven at 160°C to 190°C, causing an increase in volume of about 314% (please see column 3, lines 63-68).

It cannot be understood nor is it apparent how the pricking of the pastry, the rising in a tunnel and the baking in an oven can be carried out with the stamp connected to a hydraulic press sill being in place. It is eminently apparent that the steps of pricking, rising and baking are carried out with the pastry simply and merely being placed in the mold removed from the flattening tool comprising die 7 and stamp 1. It cannot not be done in any other manner.

At the top of column 4, it is only mentioned that after baking the bases obtained are removed from the molds, namely the simple molds with rims 13 as shown in Figure 3.

Therefore, Fuornet et al. fail to teach pre-baking of a pastry dough by maintaining it in shape between a mold and a perforated counter-mold. Accordingly, Fuornet et al. fail to anticipate the present invention. In particular, anticipation requires the disclosure, in a prior art reference, of each and every recitation as set forth in the claims. *See Titanium Metals Corp. v. Banner*, 227 USPQ 773 (Fed. Cir. 1985), *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 1 USPQ2d 1081 (Fed. Cir. 1986), and *Akzo N.V. v. U.S. International Trade Commissioner*, 1 USPQ2d 1241 (Fed. Cir. 1986).

There must be no difference between the claimed invention and reference disclosure for an anticipation rejection under 35 U.S.C. 102. *See Scripps Clinic and Research Foundation v. Genentech, Inc.*, 18 USPQ2d 1001 (CAFC 1991) and *Studiengesellschaft Kohle GmbH v. Dart Industries*, 220 USPQ 841 (CAFC 1984).

US Patent 5,894,028 to Alden et al. fails to overcome the above discussed deficiencies of Fuornet et al. with respect to rendering unpatentable the present invention. Alden et al., like Fuornet et al., fail to teach pre-baking of a pastry dough by maintaining it in shape between a mold and a perforated counter-mold. Therefore, claims 5-7 are patentable for at least those reasons as to why claim 1, as amended, is patentable.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

In the event that the examiner believes that an interview would advance the prosecution of this application in any way the undersigned is available at the phone number noted below.

Please charge any fee due with this paper to our Deposit Account No. 22-0185, under Order No. 22193-00007-US from which the undersigned is authorized to draw.

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Respectfully submitted,

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